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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,876	06/13/2002	Andreas Hadler	DNAG 230	2623
24972	7590	10/11/2005		
FULBRIGHT & JAWORSKI, LLP 666 FIFTH AVE NEW YORK, NY 10103-3198			EXAMINER ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*mu*

## Office Action Summary

Application No.

10/018,876

Applicant(s)

HADLER ET AL.

Examiner

Susan C. Alimenti

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 47-83 is/are pending in the application.
- 4a) Of the above claim(s) 59-62, 72 and 81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 47-58, 63-71, 73-80, 82 and 83 is/are rejected.
- 7) ☒ Claim(s) 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species A, i, in the reply filed on 15 July 2005 is acknowledged. The traversal is on the ground that the examiner has already searched claimed subject matter. This is not found persuasive because in the Request for Continued Examination filed 22 February 2005 all previous claims were canceled and new claims 47-83 were added, where at least claims 69-83 are newly drafted claims placing additional burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 59-62, 72 and 81 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 15 July 2005.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the circular annular surface of the hard penetrating core as recited in claim 55 must be shown or the features canceled from the claim. No new matter should be entered.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

Art Unit: 3644

should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

5. Claim 74 is objected to because of the following informalities: It is believed that the phrase “said hard penetrating core” should properly read “said penetrator core.” Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 47-58, 63-68, and 75-78 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3644

Regarding claim 47, the phrase in lines 8-10, "wherein the shape. . . are harmonized with the fragmentation characteristics required for the projectile. . . nature of the quarry," is indefinite and vague since it is unclear what is defined by said phrase and what would sufficiently "harmonize" with "fragmentation characteristics." Similarly, claim 58 recites, "a shape matched to required flight characteristics," however, this phrase is indefinite since the required flight characteristics are relative to the application, and it is unclear how such a requirement would affect the structure of the projectile.

Claim 64 recites the limitation "the transition point" in 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 75 and 76 recite the limitation "said bore," and claims 77 and 78 recite the limitation "said cavity." There is insufficient antecedent basis for these limitations in the claims.

Claims 48-57, 63, and 65-69 are rejected as being dependant upon the rejected independent subject matter.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 47-54, 56-58, 63, and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Pejsa (US 4,776,279).

Art Unit: 3644

Regarding claims 47-51, 69, 70, 74, 75, 80, and 83, Pesja discloses the claimed projectile, as best understood, having a hard penetrating core 30 nested inside a centrally aligned, conical recess of soft core 12, and a jacket 14 completely surrounding both aforementioned cores.

Regarding claim 52, the cavity does not extend more than  $\frac{3}{4}$  of the length of the soft core 12.

Regarding claim 53 the front, circular edge of soft core 12 that contacts jacket 14, lies perpendicular to the mid-line of the projectile.

Regarding claim 54 said recess matches the shape of the rear of hard core 30.

Regarding claim 56, Pesja notes the hard core 30 may be made of a plastic material (col.4, lns.40-48).

Regarding claim 57, Pesja shows a flat head tip in Figure 3.

Regarding claim 63, the tip of hard core 30 in Figures 1 and 2, is considered to be sharp.

Regarding claim 64, and 82 as best understood, crimps 22 are formed in the jacket 14.

Regarding claims 77 and 78, a cavity 32 is narrower than the recess.

10. Claims 47-54, 57, 58, 63, and 65-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood (US 1,134,797).

Wood discloses the claimed invention as best understood, more specifically an expanding projectile comprising a jacket 3, a fragmenting soft core 2, and a hard penetrating core 4 disposed in front of said soft core 2 as seen in the direction of trajectory. The soft core 2 and penetrating core 4 are enclosed completely by said jacket 3.

Art Unit: 3644

The nose of the projectile is considered to be edge 5 of penetrating core 4, wherein said nose has a recess defined as the hollow conical interior, as best viewed in Figure 4, of penetrating core 4 and the tip angle is considered to be within the range of 30-90 degrees.

Regarding claim 52, a cavity, defined as the volume filled by rear tip 7 adjoins said recess and extends no more than 75% of the length of the soft core 2.

Regarding claims 53 and 55, edge 5 is a circular annular surface and is perpendicular to the midline of the projectile.

Regarding claim 57, Wood shows the nose 5 to be a flat head in Figures 3-4.

Regarding claim 58, the tip of the projectile is considered match required flight characteristic to generally conform to the shape of the rear of the projectile and vice versa.

Regarding claim 63, the tip of the projectile in Figure 1 is considered to have a sharp edge.

Regarding claims 65 and 66, the thickness of jacket wall 3, as seen in at least Figures 1 and 2, decreases in thickness from the rear toward the forward front edge.

11. Claims 69, 70, 74-79, and 83 are rejected under 35 U.S.C. 102(b) as being anticipated by Carter (US 5,621,186).

Carter discloses a projectile, as best viewed in Figure 5, comprising a soft core 10 made of lead, and a hard penetrating core defined as the plastic tip (col.3, lns.18-20) set in the nose of soft core 10. A jacket 14 surrounds majority of the projectile and contacts a rear portion of the plastic hard-core tip. The recess in the nose of the projectile is conical and aligned along a mid-line recess of the projectile.

Art Unit: 3644

Claims 69, 70, 74-79, and 83 are rejected under 35 U.S.C. 102(b) as being anticipated by

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 67 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesja as applied to claim 47 above, and further in view of Stone (US 6,691,623).

Pesja discloses the claimed invention having a penetrator core made of a plastic tip except the soft core is made of lead. Stone teaches the use of an alternative soft projectile material that is lead-free, and thus will not contaminate the environment surrounding the intended target. Lead can be a very dangerous and poisonous material to the environment and those in contact with said substance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Stone's lead-free material in order prevent the possibility of contaminating the environment.

Regarding claim 68 the lead-free material is made from at least, iron and zinc (Stone, col.2, lns.54-57)

14. Claims 71, 73, 82 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Rapp et al. (US 3,132,591).



Art Unit: 3644

Regarding claims 71 and 83, Carter discloses the claimed invention except he does not positively show the plastic penetrator tip to have a hollow tip. Carter, however, does teach the use of a hollow tipped projectile In Figure 2 that provides a particular desired impact effect. Further, Rapp teaches the use of insert 4 having hollow tip 6 providing a greater mushrooming effect upon impact. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tip insert in Carter's projectile with a hollow tip in order to enhance the mushrooming effect upon impact.

Regarding claims 73 and 82, Carter does not positively show a crimping in the side of the jacket 14. Rapp teaches a crimping effect in jacket 1 at a transition point where the insert 4 is received in the rearward core 3. Such a crimping is well-known to supply a weak point to further facilitate a desired expansion effect for the jacket upon impact. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a crimp in Carter's hardened jacket 14 in order to ensure that the jacket follow a predetermined expansion effect upon impact with a target.

***Allowable Subject Matter***

15. Claim 55 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 3644

***Conclusion***

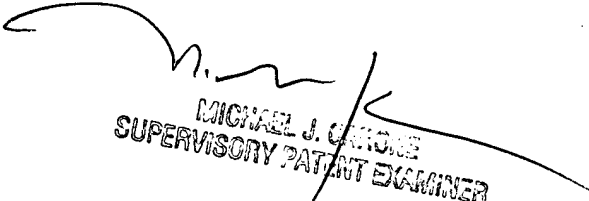
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan C. Alimenti

  
MICHAEL J. O'ROURKE  
SUPERVISORY PATENT EXAMINER